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Item 5 of the provisional agenda*
Discussion of substantive issues related to international cooperation in tax matters

Update on selected current and expected publications of the Committee of Experts

Note by the Secretariat

1. The Committee of Experts on International Cooperation in Tax Matters is a subsidiary body of the Economic and Social Council responsible for keeping under review and updating proposals in relation to international taxation. The previous membership of the Committee made substantial progress in the area of international taxation by successfully launching, developing and/or updating five products in diverse and forward-looking areas of international taxation that are of particular interest to developing and least developed countries. The following new products have been developed or proposed since the end of the previous membership's term, in June 2017:

(a) An updated version of the United Nations Model Double Taxation Convention between Developed and Developing Countries;

(b) An updated version of the United Nations Practical Manual on Transfer Pricing for Developing Countries;

(c) A new United Nations Handbook on Selected Issues in the Taxation of the Extractive Industries for Developing Countries;

(d) The proposed outline of a new United Nations Handbook on Dispute Avoidance and Resolution, to be accompanied by the Guide to the Mutual Agreement Procedure;

(e) A newly revised version of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries.

* E/C.18/2017/4.

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United Nations Model Double Taxation Convention between Developed and Developing Countries

2. One of the highlights of the fourth version of the United Nations Model Convention is the introduction of a new article 12.A on fees for technical services, unique to the United Nations model, which increases the prominence of source-based taxation in the United Nations model, an issue that is of relevance to developing countries. The new version also incorporates some of the language of the base erosion and profit shifting project of the Organization for Economic Cooperation and Development.

3. In the 2017 update the Committee of Experts made several changes to the United Nations Model Convention to prevent taxpayers from using the provisions of bilateral tax conventions improperly to obtain treaty benefits. First, the title of the convention has been amended to refer expressly to "the prevention of tax avoidance and evasion". Second, a new preamble has been added which clarifies that tax conventions are not intended to create opportunities for tax avoidance or evasion, including tax avoidance through treaty-shopping arrangements. Third, a new general anti-abuse rule has been included in article 29, paragraph 9 of the United Nations Model Convention. This general anti-abuse rule and the specific anti-abuse rules included in tax treaties are intended to prevent transactions and arrangements from obtaining treaty benefits in circumstances where granting such benefits would be contrary to the object and purpose of the convention. These additions to the United Nations Model Convention will make the provisions of the convention more effective in preventing treaty abuse.

4. Other changes to the United Nations model include:

(a) A new version of article 1 that includes a fiscally transparent entity clause and a savings clause;

(b) A revised article 4 which includes a new tie-breaker rule for determining the treaty residence of dual-resident persons other than individuals;

(c) A modified article 5 that has the goal of preventing the avoidance of permanent establishment status;

(d) A revised article 10;

(e) A new version of article 13, paragraph 4 and a consequential change in paragraph 5;

(f) Some changes to articles 23A and 23B;

(g) A new article 29, which brings to the United Nations model a new limitation on benefits clause, alternatively to the application of a principal purpose test.

5. The new version of the United Nations Model Convention is expected to be published in October 2017, on the occasion of the fifteenth session of the Committee of Experts.

United Nations Practical Manual on Transfer Pricing for Developing Countries

6. The second edition of the United Nations Practical Manual on Transfer Pricing for Developing Countries was intended to be even more practical than the first edition and to provide greater country practice in the field of transfer pricing. Special attention was paid to the experience of developing countries and the capacity development work being done in this area. The goal was for the manual to

be more responsive to current country concerns and to reflect the rapid developments in this area.

7. The changes to the second edition of the manual include a revised format and the rearrangement of some parts of the manual for clarity and ease of understanding, including reorganization into four parts, as follows:

(a) Part A relates to transfer pricing in a global environment;

(b) Part B contains guidance on design principles and policy considerations, including substantive guidance on the arm's-length principle, with chapter B.1 providing an overview, chapters B.2 to B.7 discussing the key topics in detail and chapter B.8 demonstrating how some countries have established a legal framework to apply these principles;

(c) Part C addresses practical implementation of a transfer pricing regime in developing countries;

(d) Part D contains country practices, similarly to chapter 10 of the previous edition of the manual. A new statement of Mexican country practices is included and other statements are updated;

(e) There are new chapters on intra-group services, cost contribution arrangements and the treatment of intangibles;

(f) There is significant updating of other chapters;

(g) An index has been added to make the contents more easily accessible.

8. The Manual was digitally launched in April 2017 during the special meeting of the Economic and Social Council on international cooperation in tax matters, which followed the fourteenth session of the Committee of Experts. A paperback version is expected to follow in October 2017, on the occasion of the fifteenth session of the Committee of Experts.

United Nations Handbook on Selected Issues in the Taxation of the Extractive Industries for Developing Countries

9. A new handbook on taxation of extractive industries for developing countries has been completed and is ready to be launched. It is the first ever in this field, highlighting some of the issues developing countries should bear in mind when negotiating new contracts for the exploration and exploitation of natural and mineral resources within their territories. The handbook covers the following topics:

(a) Overview of extractive industries taxation issues;

(b) Fiscal take;

(c) Permanent establishment issues for the extractive industries;

(d) Indirect transfer of assets;

(e) Tax aspects of negotiation and renegotiation of contracts;

(f) Transfer pricing issues in the extractive industries;

(g) Value added tax in the extractive industries;

(h) Tax treatment of decommissioning for the extractive industries.

10. The objective of the handbook is to focus on specific areas of interest for developing countries. The handbook is expected to be published in October 2017, on occasion of the fifteenth session of the Committee of Experts.

Handbook on Dispute Avoidance and Resolution and Guide to the Mutual Agreement Procedure

11. The Handbook on Dispute Avoidance and Resolution and the Guide to the Mutual Agreement Procedure are tandem products which have been agreed upon but not completed by the previous membership of the Committee of Experts. Many of the features of the handbook and the guide are still to be determined by the current membership. An extended outline of the handbook has been made available for review and approval by the Committee of Experts at its fifteenth session.

12. The proposed handbook is to function as a living document, which would be regularly updated as developing countries gain more experience with the different dispute avoidance and resolution mechanisms. It could also provide practical guidance and instructive case studies drawn from real-life examples.

13. The updated version of the Guide to the Mutual Agreement Procedure is expected to complement the handbook and to be of particular value to countries currently engaging in mutual agreement procedures, while at the same time acting as a self-standing document.

14. The main difference between the two products, as originally conceived, is that the handbook would be aimed at countries that did not yet have much experience with the mutual agreement procedure and other forms of dispute resolution, whereas the guide would be directed at countries that already had such experience.

15. In July 2017, the Vienna University of Economics and Business, the World Bank and the United Nations Office on Drugs and Crime (UNODC) organized a meeting on tax and good governance in Accra, with the objective of obtaining developing countries' inputs for the proposed outline of the handbook and the guide. Representatives of 17 African countries, as well as UNODC, the World Bank, the African Development Bank, the Economic Commission for Africa, the African Tax Administration Forum and the International Monetary Fund attended the meeting. The African countries attending the meeting welcomed the initiative, recognizing that they lacked experience in mutual agreement procedures. They noted that they expected that to change in the coming years, partly as a result of the base erosion and profit shifting project, but also due to the fact that the African tax administrations were building up their expertise on international tax issues. The private sector also supported the initiative, emphasizing the need to have joint training programmes between government and the business sector. Those present congratulated the work of the Subcommittee on the Mutual Agreement Procedure — Dispute Avoidance and Resolution, convened under the previous membership, for putting forward a constructive outline, while emphasizing that more emphasis was needed on how to avoid cross-border disputes.

16. The current membership of the Committee of Experts is invited to follow up on this work flow and potentially to reconvene a subcommittee on the mutual agreement procedure, so that these two products can be further discussed and finalized during the term of the current membership.

Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries

17. The Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries was originally published in 1979 to strengthen the expertise of tax officials in developing countries. The main purpose of the manual was to provide practical guidance to treaty negotiators in developing countries, as treaties play a key role in international cooperation on tax matters. The manual was substantially updated in 2016 to give more practical and relevant guidance.

18. The question of a possible update of the 2016 version of the manual will be addressed at the fifteenth session of the Committee of Experts under item 5 (c) (iii) of the provisional agenda.

Conclusion

19. Over the course of the last five years, tax has climbed to the top of the international political agenda. Tax is no longer an isolated topic discussed in a closed forum. It is essential to the development and prosperity of developing and least developed countries, and for the achievement of the 2030 Agenda for Sustainable Development. The publications discussed above, albeit technical, aim to equip the tax administrations of developing countries with the necessary tools to adequately tax their citizens, negotiate tax treaties and better represent their own interests when faced with conflicts of interest from other stakeholders. Tax is at the heart of resource mobilization for development, including balancing the need for budget revenue with the need for a suitable investment climate, and these publications provide the tools for economic development and growth through the utilization of taxing instruments. Quality guidance from the Committee of Experts on important technical aspects and policy choices relating to priority areas for developing countries is a key part of ensuring good policy and administration that works on the ground in and for developing countries.